

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\_\_\_\_\_  
In the Matter of )

Long-Term Telephone Number )  
Portability Tariff Filings of )  
U S WEST Communications, Inc. )  
\_\_\_\_\_ )

CC Docket No. 99-35

Transmittal Nos. 965 and 975

### OPPOSITION TO DIRECT CASE

The U S WEST-served Cities of Albuquerque and Tucson file this opposition to the direct case of U S WEST pursuant to the Bureau's Order Designating Issues for Investigation (DA 99-561), released March 25, 1999. Tariffs under Transmittal Nos. 965 and 975 were suspended by Division orders (DA 99-306 and -560), released February 9 and March 22, 1999, respectively. The Cities have standing as bodies politic and municipalities. Cf. Section 208 of the Act ("any body politic or municipal organization").

Section 251(b)(2) of the Telecommunications Act of 1996, imposes on LECs "the duty to provide ... number portability in accordance with requirements prescribed by the Commission." Section 251(e)(2) provides that "the cost of establishing telecommunications ... number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."

On May 12, 1998, the Commission issued its Third Report and Order in Docket No. 96-116, 13 F.C.C. Rcd 11701, 12 P&F C.R. 1 (FCC 98-82). U S West has the burden of proving

that its rates are justified only by new, incremental costs incurred “specifically in the provision of number portability services.” *Id.* at 11740, 12 P&F C.R. 23. This standard is further elaborated on in the Bureau’s cost classification order, DA 98-2534, 13 F.C.C. Rcd 24495, 14 P&F C.R. 434, released December 14, 1998, application for review pending.

U S West’s proposed monthly line charges and query charges are excessive on their face. The 54-cent rate is the highest of any other party to this proceeding and more than twice those of Bell Atlantic. U S West’s proposed database query charges are at least twice those of any other RBOC in the country. These comparative figures are drawn from the attached chart based on respective carrier transmittals. These excessive proposed rates appear to be due to two factors, viz.; (1) directly to U S West’s inclusion of costs other than new, incremental costs, as described in the declaration of the Cities’ accounting expert, Garth T. Ashpaugh, appended hereto and (2) indirectly to the Company’s parsimonious investment in advanced central office equipment. See tabulation of comparative conversions to electronic offices drawn from carriers’ ARMIS Reports 43-02 Table B16, “Balance Sheet Accounts (Plant Accounts)”. The ratepayers should not be required to bear the burden imposed by Company management’s historic short-changing of investment in switches.

Although the query charges are imposed on other carriers rather than on subscribers directly, the excessiveness of these charges injures the economies of the U S West-served cities. See declaration of the Cities’ accounting expert, Garth T. Ashpaugh, attached hereto.

U S West has failed to show that the costs it proffers in justification for its tariffed rates (1) qualify as new, incremental costs, (2) do not involve double-recovery, (3) are correctly calculated and/or supported by special studies where required, and (4) are not the result of

technological and operating inefficiencies attributable to the Company's management. See Ashpaugh declaration.

Prayer

For the reasons set forth above, the Commission should find that U S West has not discharged its statutory "burden of proof to show that the new ... charge, is just and reasonable...." Therefore, the Commission should conclude that the charges proposed to be tariffed are unlawful retrospectively under Section 204 of the Act and should order refunds under the accounting orders. Based on the record in this matter, the Commission should prescribe a lower maximum rate on a going-forward basis under Section 205 of the Act.

Respectfully submitted,



William Malone  
Marci L. Frischkorn<sup>1</sup>

MILLER & VAN EATON, P.L.L.C.  
1155 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036-4306  
(202) 785-0600

Attorneys for the  
Cities of Albuquerque and Tucson

May 7th, 1999

Attachments:

Table based on ARMIS Reports 43-02 (1998)  
Service Provider Portability Service Charges Chart  
Declaration of Garth T. Ashpaugh

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<sup>1</sup> Admitted in Virginia; not admitted in D.C.

## ARMIS REPORT 43-02

COSA	COMPANY	ROW NUMBER	ROW TITLE	ENDING BALANCE 1998	%
TOTL	Total Industry	2211	TPIS-Central Office: Analog	5,632,303	8.89%
TOTL	Total Industry	2212	TPIS-Central Office: Digital	57,714,996	91.11%
TBOC	Total BOC	2211	TPIS-Central Office: Analog	5,415,365	11.18%
TBOC	Total BOC	2212	TPIS-Central Office: Digital	43,030,063	88.82%
USTR	US WEST	2211	TPIS-Central Office: Analog	1,185,826	18.31%
USTR	US WEST	2212	TPIS-Central Office: Digital	5,202,240	81.21%

## Service Provider Number Portability Service Charges Subject to Investigation in CC Docket No. 99-35

	Bell Atlantic		SBC	Pac Bell	Bellsouth
	Bell Atlantic Network Services	NYNEX	SBC		
End User Charge	\$.24/mos. <i>(to be recovered over 60 mos.)</i>	\$.23/mos. <i>(to be recovered over 60 mos.)</i>	\$.48/mos. <i>(to be recovered over 60 mos.)</i>	\$.50/mos.	\$.39/mos.
Database Query	SNP Query \$.000926 SPNP Database Query \$.000648	SNP Query \$.000926 SPNP Database Query \$.000648	SPNP Query- prearranged Tandem: \$.00115 End Office: \$.00115 SPNP Query-default Tandem: \$.00115 End Office: \$.00115 SPNP Query-database \$.00061	SPNP Prearranged Query: \$.00042 SPNP default Query: \$.00042  SPNP Database Query: \$.00022	LNP Query Service Mos. to Mos. Plan: \$.0013
Effective Date	April 19, 1999	April 19, 1999	February 1, 1999	February 1, 1999	May 15, 1999
Transmittal No.	1111,1122	548	2745	2029	502
Tariff	Bell Atlantic Network Services TARIFF F.C.C. No.1 §13.3.16	TARIFF F.C.C. No. 1 §13.13.13	FCC Tariff No. 73	TARIFF F.C.C. No. 128	TARIFF F.C.C. No. 1 § 13.3.21, §6.8.12

	US West	GTE (GTOC)	GTE (GSTC)	Sprint	Ameritech
End User Charge	\$.54/mos.	\$.38/mos.	\$.38/mos.	\$.48/mos.	\$.41/mos.
Database Query	LNP Query Service-Default tandem: \$.006422 End Office: \$.0072			Prearranged query: \$.004227 Default query: \$.004227	LNP Query -Default: Tandem: \$.003102 End Office: \$.003102 <i>(per query)</i> LNP Database Access Query: \$.001330 <i>(per query)</i>
Effective Date	March 24, 1999	March 4, 1999	March 4, 1999	March 15, 1999	February 1, 1999
Transmittal No.	975	1190,1196	271,275	72,73,76	1186,1187
Tariff	TARIFF F.C.C. No. 5 §13.4.3	TARIFF F.C.C. No.1 § 6.16	TARIFF F.C.C. No. 1§ 8.14	TARIFF F.C.C. No. §20.5.1	TARIFF F.C.C. No. 2 §4.7

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Washington, DC 20554

In the Matter of:	)	
	)	
Long-Term Telephone Number Portability	)	CC Docket No. 99-35
Tariff Filings of	)	
	)	
U S WEST Communications, Inc.	)	Transmittals Nos. 965 and 975
	)	
	)	

**DECLARATION OF GARTH T. ASHPAUGH**

I, Garth T. Ashpaugh, declare under penalty of perjury that the information presented herein is true and accurate to the best of my knowledge, information, and belief.

1. I am an executive consultant with the consulting firm of Public Resources Management Group, Inc. ("PRMG") where I have been employed since March 1, 1997. My professional and business address is 225 South Swoope, Suite 211, Maitland, Florida 32751. Prior to this, I was employed with R. W. Beck, Inc., utility consultants, from February 1, 1991 to February 28, 1997 and the Missouri Public Service Commission as an audit supervisor from August 5, 1978 to January 31, 1991. I have over 17 years of experience in regulatory and utility matters. I am licensed as a certified public accountant in the states of Missouri and Florida. My resume outlining my experience and qualifications is attached to this declaration as Exhibit A.

2. This declaration is prepared in response to the filings of U S West Communications, Inc. ("U S West") in this matter on behalf of the City of Albuquerque, New Mexico and the City of Tucson, Arizona (jointly "the Cities").

3. I have reviewed the redacted versions of the Direct Case<sup>1</sup> and Transmittals 965 and 975<sup>2</sup>. Based these reviews which were limited only to the information contained in these filings, I have the following comments:

- A. U S West admits in the Summary (p. iii) that it has identified costs that are currently being recovered through separations. The Third Report and Order<sup>3</sup>

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<sup>1</sup> U S WEST Communications, Inc., Direct Case in CC Docket No. 99-35, filed April 26, 1999 ("Direct Case").

<sup>2</sup> U S WEST Communications, Inc., Transmittal Nos. 965 and 975 filed in response to DA 99-306 ("Transmittals 965 and 975");

<sup>3</sup> In the Matter of Telephone Number Portability, Third Report and Order, 13 FCC Rcd. 11701 (1998).

## Declaration of Garth T. Ashpaugh

and the Cost Classification Order<sup>4</sup> are clear that identified LNP costs must be "but for" costs incremental to the provisioning of number portability. The two-part test adopted in the Cost Classification Order<sup>5</sup> states that costs eligible for LNP recovery "(1) would not have been incurred by the carrier 'but for' the implementation of number portability; and (2) were incurred 'for the provision of' number portability service." Since number portability is a new service, "but for" costs must also be new costs. If the LEC is seeking recovery of existing costs, the costs are not "but for" costs and are being recovered in an existing charge or rate. Allowing such existing charges to be included as eligible LNP costs makes double recovery an almost certainty. Obviously, existing costs included in separations which are allocated to LNP are not "but for" costs that should be excluded from the determination of LNP charges and, if included, would be a double recovery.

- B. U S West has failed to employ valid factors in calculating operating costs for LNP. U S West uses factors to develop operating expenses such as maintenance, ad valorem, administration, and business fees.<sup>6</sup> U S West calculated maintenance costs as "15% of the costs incurred for development and modification of OSS that was required for LNP purposes". First, 15% is standard rate not developed or supported specifically for LNP. Second, this is a double recovery of at least maintenance personnel/labor since such charges are currently being recovered in existing rates and charges. On capital maintenance, U S West uses a 2% factor. The Cost Recovery Order<sup>7</sup>, relying on the Third Report and Order, says general overhead loading factors cannot be used, "(t)he Third Report and Order prohibited use of general overhead loading factors in identifying eligible LNP costs,...", but "the use of incremental allocation factors determined through a special study of this nature is a reasonable method of determining incremental overheads associated with LNP...". Specifically addressing query charges, the Cost Classification Order goes on to state "(t)hus, any overhead allocation factor to be applied to query service charges must be an incremental overhead based on a special study similar to the study Ameritech has proposed with respect to retail common costs, but adapted to apply to query services (wholesale common costs)." Such query charges are a relevant area of concern for the Cities, which are interested in making competitive local exchange services available in their communities. The excessive charges proposed by U S West are a burden to entry to companies wishing to enter the local exchange market. U S West has not performed a special study, has not identified wholesale common costs, and is

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<sup>4</sup> In the Matter of Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-166, RM 8535, DA 98-2534, rel. Dec. 14, 1998 ("Cost Classification Order").

<sup>5</sup> Id. At 5-6.

<sup>6</sup> Direct Case at 5, 13 and 14.

<sup>7</sup> Cost Classification Order at 14, para. 34 and 35.

Declaration of Garth T. Ashpaugh

relying on its past experience. As such, the use of these factors and all associated costs included in LNP charges should be disallowed.

- C. In response to Issue 5 End User Charge, U S West says it did not include pre-existing administration costs but billed existing personnel to the LNP process.<sup>8</sup> Now if these existing people were being recovered someplace in rates and the costs have now been shifted to LNP, this is double recovery of existing costs. Again, as discussed above, these are not "but for" and are not new and are being recovered in existing rates and charges and should not be allowed as eligible LNP costs.
- D. The position of U S West concerning LNP activity costs seems unclear and inconsistent. U S West's response to Issue 12 indicates in the discussion of the end-user surcharge that "(i)t is essential that U S West work with the competitive local exchange carriers to ensure all customers are connected to the competitive local exchange carrier before U S West disconnects the customer in our records."<sup>9</sup> Yet in response to Issue 6, U S West states "(t)he trigger keeps calls from being routed to the line within the donor switch that is to be disconnected —that is, prior to completion of the service order disconnecting the line but after the new provider's line has been activated."<sup>10</sup> It seems that U S West's inefficiencies in accomplishing LNP are causing these costs.
- E. U S West's response to Issue 12 also indicates in the discussion of the end-user surcharge that U S West is developing training materials for their "co-carriers", apparently whether the co-carriers want it or need it. "U S West is working closely with competitive local exchange carriers to ensure they understand and can utilize all available processing methods."<sup>11</sup> U S West seems to indicate that it is then charging these costs to the end-user, although in the next paragraph, U S West states "(c)osts related to training/educating the co-carriers are not included."<sup>12</sup> It is not clear if U S West is billing the end user for these costs or not. U S West has determined that it must incur costs to develop materials to teach companies like AT&T, MCI, Sprint and the other LECs how to manage the LNP process. Such involuntary costs are not necessary for and are not required for LNP. Such costs should be disallowed from the end user charge.
- F. Finally, in its response to Issue 12, U S West indicates that the query charge includes a loading for business fees, which are "expenses associated with gross receipts taxes and other taxes that vary with the volume of revenue and

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<sup>8</sup> Direct Case at 13.

<sup>9</sup> Id. at 28.

<sup>10</sup> Id. at 15-16.

<sup>11</sup> Id. at 28.

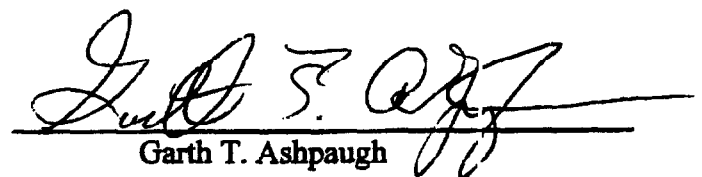
<sup>12</sup> Id. at 28.



## Declaration of Garth T. Ashpaugh

accordingly are an incremental cost of LNP."<sup>13</sup> Typically, utility gross receipts taxes are only assessed on the end user related to the retail transaction. Since U S West operates in 14 states, this may vary from state to state but the query charge is a wholesale transaction, and, as such, should be exempt from these types of expenses (e.g., in Missouri utility wholesale transactions are not subject to gross receipts taxes). This cost needs to be clarified as to whether it is applicable to an LNP query transaction. If this is not a legitimate, incremental cost of U S West related to the query transaction, it should be disallowed.

- G. U S West has failed to support the 1.89 overhead factor as an eligible LNP cost. At Issue 13, U S West discusses the use of the 1.89 overhead factor.<sup>14</sup> I have addressed the use of overhead factors in B. above and U S West's application of the 1.89 overhead factor is exactly the same problem. It is not a new cost, it is not supported by a special study to support the application of the factor to a wholesale transaction, and as an existing cost it is being recovered in current rates and charges so inclusion as an eligible LNP cost would be a double recovery of existing expenses.
- H. In Chart 2b, U S West is calculating federal income taxes without recognizing the deduction of state & local taxes for the determination of federal income taxes. Recognizing this reduces the effective tax rate to 32.97%.
- I. In Chart 5b, U S West has obviously miscalculated income taxes. Income taxes are equal to return. U S West discusses in the Summary and in Transmittal 975 that income taxes should only be on the equity component of the return and, as such, cannot be equal to return. Additionally, even if return was 100% taxable, income taxes could not be equal to return unless the effective income tax rate was 50%.

  
Garth T. Ashpaugh

Dated: May 7, 1999

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<sup>13</sup> Id. at 29.

<sup>14</sup> Id. at 30-32.

## GARTH T. ASHPAUGH

### EXECUTIVE CONSULTANT

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<b>Education</b>	BS, Business Administration, University of Missouri, 1976
<b>Professional Registration</b>	Certified Public Accountant, State of Florida #0023193 Certified Public Accountant, State of Missouri #007098
<b>Professional Affiliations</b>	Florida Institute of Certified Public Accountants American Institute of Certified Public Accountants National Association of Telecommunications Officers and Advisors

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#### *Qualifications and Experience Summary*

Mr. Ashpaugh has been engaged in utility regulation full-time for over twenty years. His previous experience includes consulting since 1991 and working as Audit Supervisor with the Missouri Public Service Commission. He holds licenses as a Certified Public Accountant in the states of Missouri and Florida. He is not in public practice.

#### *Relevant Expertise*

##### Litigation Support And Expert Testimony

- Cost of Service Mergers and Acquisitions
- Cost of Service Issues and Analysis
- Construction Audits

Mr. Ashpaugh has an extensive background in providing litigation support and expert testimony. He has assisted clients in evaluating proposed mergers including Kansas City Power and Light and UtiliCorp, Baltimore Gas and Electric Company, and Potomac Electric Power Company. He also filed testimony addressing the issues developed in the BGE/PEPCO merger. He has reviewed the filings, developed cost analyses, and workout proposals regarding bankruptcies of electric utilities. He has analyzed accounting and rate issues regarding most current issues before the Federal Energy Regulatory Commission (FERC), including the 1990 Amendments to the Clean Air Act and pronouncements of the Financial Accounting Standards Board (FASB). He has provided expert testimony in twenty-nine Missouri rate cases regarding cost of service, mergers and acquisitions, and construction audits; these included telephone, electric, gas, and water utility companies.



**GARTH T. ASHPAUGH****EXECUTIVE CONSULTANT**

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**Retail And Wholesale Rates**

- Cost of Service Studies
- Electric Rate Audits
- Nuclear Power Plant Audits

Mr. Ashpaugh has worked extensively in the area of rates. He has analyzed wholesale electric rate filings, assisted in the negotiation of electric rates and charges under contract rates, and testified on electric cost of service. He performed and supervised cost of service studies in over thirty cases before the Missouri Commission. While at the Commission, he served as the lead auditor for electric rate case audits, and project coordinator for the construction audit of a nuclear plant. This required the supervision and coordination of the efforts of fifteen auditors with the Commission's engineering, legal, and rate design departments. Mr. Ashpaugh also developed the phase-in model methodology utilized by the Missouri Commission in ordering phase-ins of Union Electric's Callaway Nuclear Plant, Kansas City Power and Light's portion of the Wolf Creek Nuclear Plant, and Arkansas Power and Light Company's allocation of costs associated with the Middle South's Grand Gulf Nuclear Plant.

Mr. Ashpaugh also headed a national audit of a large telephone research company which involved engineers, accountants, and economists of ten State Commissions and the Federal Communications Commission. This audit took an in-depth look at research and development in telecommunications, including Integrated Services Digital Networks (ISDN) and fiber optics. The report, issued in December 1991, discussed regulatory concerns and treatment of these expenditures.

Since leaving the Commission, Mr. Ashpaugh has analyzed cost of service for contractual purchases of electricity by municipal power agencies from investor-owned utilities. He has analyzed maintenance expense of an electric generating cooperative and testified before the Alaska Public Utilities Commission regarding the appropriate annual level of this expense in cost-of-service. He has determined wholesale and retail cost of service rates for a New England electric cooperative emerging from bankruptcy. He has also analyzed the wholesale rate filing of a major Florida investor-owned electric utility for the filing of an intervention and protest by some of our municipal clients.

**Telecommunications**

Mr. Ashpaugh has assisted local governments for many years regarding: ordinances addressing users of rights-of-way; telecommunications planning and design for their internal uses and for the local government; strategic planning regarding telecommunications, the community, economic development, and quality of life issues; contract negotiation and franchise renewals; and regulatory matters. He has participated in performing initial feasibility studies, helped local



**GARTH T. ASHPAUGH****EXECUTIVE CONSULTANT**

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authorities in evaluating requests by cable operators for rate increases or changes in service offerings, and provided expert testimony before city councils and other regulatory bodies.

Cable Rate Regulation And Franchise Negotiation

Mr. Ashpaugh has performed cable rate reviews for local regulatory bodies in Arizona, California, Florida, Maryland, Michigan, New Mexico, New York, Pennsylvania, Texas, Virginia, and Wyoming. He has analyzed the rate filings of cable operators, provided detailed reports of the analyses to the franchising authorities, and recommended new cable rates to the franchising authorities which either have been implemented or are under consideration. He has assisted the firm of Miller and Van Eaton (formerly the Washington, DC office of Miller, Canfield, Paddock and Stone) in the filing of comments with the Federal Communications Commission ("FCC") regarding rate regulation of cable. He has made presentations in Florida, Georgia, Hawaii, Massachusetts, New Mexico, Oklahoma, Oregon, and South Carolina on cable rate regulation. He is a member of the National Association of Telecommunications Officers and Advisors ("NATOA").



Certificate of Service

I, Marci L. Frischkorn, do hereby certify that on this 7<sup>th</sup> day of May, 1999, copies of the foregoing Opposition to Direct Case were hand delivered or mailed first class mail to the following parties:

Arch Communications Group, Inc.  
1800 West Park Drive  
Suite 250  
Westborough, MA 01581

Sandra K. Williams  
Sprint Local Telephone Companies  
4220 Shawnee Mission Parkway  
Suite 303A  
Fairway, KS 66206

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge HQE03J27  
Irving, TX 75015-2092

Mark C. Rosenblum  
Roy E. Hoffinger  
James H. Bolin, Jr.  
Peter H. Jacoby  
AT&T Corporation  
295 North Maple Avenue, 3245H1  
Basking Ridge, NJ 07920

Larry A. Peck  
Ameritech  
2000 West Ameritech Center Drive  
Room 4H86  
Hoffman Estates, IL 60196-1025

Jane Jackson, Chief  
Competitive Pricing Division  
Federal Communications Commission  
445 Twelfth Street, S.W., TW-A325  
Washington, D.C. 20554

James T. Hannon  
U S West Communications, Inc.  
1020 19<sup>th</sup> Street, N.W., Suite 700  
Washington, D.C. 20036

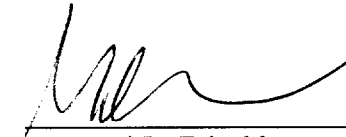
Jay C. Keithley  
Sprint Local Telephone Companies  
1850 M Street, N.W.  
11<sup>th</sup> Floor  
Washington, D.C. 20036

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W., Suite 1200  
Washington, D.C. 20036

Thomas Jones  
Brian Conboy  
Willke, Farr and Gallagher  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20554

Colleen Boothby  
Justin G. Castillo  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, N.W., Suite 900  
Washington, D.C. 20036

International Transcript Services  
1231 - 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

  
Marci L. Frischkorn

Washington, D.C.  
May 7th, 1999